

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 394**

**Introduced by Assembly Member Montanez**

February 14, 2003

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*An act to amend Sections 488.460 and 700.150 of the Code of Civil Procedure, and to amend Sections 26738 and 26746 of, and to add Section 26723 to, the Government Code, relating to law enforcement fees.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 394, as amended, Montanez. Law enforcement fees.

(1) Existing law establishes provisions by which a levying officer may serve a writ to attach property in a safe deposit box.

This bill would impose a fee of \$125 for levying on a safe deposit box, as specified. *The bill would also require the levying officer to mail a written notice to the judgment creditor demanding an additional fee, plus costs, as specified; and require the levying officer to release the levy on the safe deposit box if the additional fee, plus costs, are not paid within 3 business days of mailing the notice.*

The bill would also revise and increase existing fees for serving, executing, and processing court notices, writs, orders, and other services provided by sheriffs and marshals.

(2) Existing law requires certain processing fees to be assessed for each disbursement of money collected pursuant to specified writs, and further requires that the proceeds of these fees be deposited in a special

fund in the county treasury for allocation according to specified percentages.

This bill would delete those percentages and instead require the fund to be expended to supplement the county's cost for vehicle fleet replacement and equipment, maintenance, sheriff court services, and civil process operations.

(3) The bill, by requiring *new duties of local levying officers and the assessment of a new processing fee fees*, would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. *Section 488.460 of the Code of Civil Procedure*  
2 *is amended to read:*  
3 488.460. (a) Subject to Section 488.465, to attach property in  
4 a safe-deposit box, the levying officer shall personally serve a copy  
5 of the writ of attachment and a notice of attachment on the  
6 financial institution with which the safe-deposit box is maintained.  
7 (b) At the time of levy or promptly thereafter, the levying  
8 officer shall serve a copy of the writ of attachment and a notice of  
9 attachment on any third person in whose name the safe-deposit box  
10 stands.  
11 (c) During the time the attachment lien is in effect, the financial  
12 institution ~~shall~~ may not permit the removal of any of the contents  
13 of the safe-deposit box except ~~pursuant to the attachment as~~  
14 *directed by the levying officer.*



(d) Upon receipt of a garnishee's memorandum from the financial institution, as required by Section 701.030, indicating a safe deposit box is under levy, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional fee as required by Section 26723 of the Government Code, plus the costs to open the safe deposit box and seize and store the contents. The levying officer shall release the levy on the safe deposit box if the judgment creditor does not pay the required fee, plus costs, within three business days of the mailing of the notice by the levying officer.

(e) The levying officer may first give the person in whose name the safe-deposit box stands an opportunity to open the safe-deposit box to permit the removal pursuant to the attachment of the attached property. The financial institution may refuse to permit the forcible opening of the safe-deposit box to permit the removal of the attached property unless the plaintiff pays in advance the cost of forcibly opening the safe-deposit box and of repairing any damage caused thereby.

~~(e)~~

(f) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Refusal to permit access to the safe-deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe-deposit box pursuant to the attachment.

SEC. 2. Section 700.150 of the Code of Civil Procedure is amended to read:

700.150. (a) Subject to Section 700.160, to levy upon property in a safe-deposit box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the safe-deposit box is maintained.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the safe-deposit box stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution ~~shall~~ may not permit the removal of any of the contents

1 of the safe-deposit box except pursuant to the levy as directed by  
2 the levying officer.

3 (d) Upon receipt of a garnishee's memorandum from the  
4 financial institution, as required by Section 701.030, indicating a  
5 safe deposit box is under levy, the levying officer shall promptly  
6 mail a written notice to the judgment creditor demanding an  
7 additional fee as required by Section 26723 of the Government  
8 Code, plus the costs to open the safe deposit box and seize and store  
9 the contents. The levying officer shall release the levy on the safe  
10 deposit box if the judgment creditor does not pay the required fee,  
11 plus costs, within three business days of the mailing of the notice  
12 by the levying officer.

13 (e) The levying officer may first give the person in whose name  
14 the safe-deposit box stands an opportunity to open the safe-deposit  
15 box to permit the removal pursuant to the levy of the property  
16 levied upon. The financial institution may refuse to permit the  
17 forcible opening of the safe-deposit box to permit the removal of  
18 the property levied upon unless the judgment creditor pays in  
19 advance the cost of forcibly opening the safe-deposit box and of  
20 repairing any damage caused thereby.

21 ~~(e)~~

22 (f) During the time the execution lien is in effect, the financial  
23 institution is not liable to any person for any of the following:

24 (1) Performance of the duties of a garnishee under the levy.

25 (2) Refusal to permit access to the safe-deposit box by the  
26 person in whose name it stands.

27 (3) Removal of any of the contents of the safe-deposit box  
28 pursuant to the levy.

29 SEC. 3. Section 26723 is added to the Government Code, to  
30 read:

31 26723. The fee for levying on a safe deposit box pursuant to  
32 Sections 488.460 and 700.150 of the Code of Civil Procedure shall  
33 be one hundred twenty-five dollars (\$125), including any opening  
34 of the safe deposit box and seizure of its contents.

35 ~~SEC. 2.~~

36 SEC. 4. Section 26738 of the Government Code is amended  
37 to read:

38 26738. The fee for making a not found return on a summons,  
39 affidavit and order, order for appearance, subpoena, writ of  
40 attachment, writ of execution, writ of possession, order for

1 delivery of personal property, or other process or notice required  
2 to be served, certifying that the person or property cannot be found  
3 at the address specified shall be thirty dollars (\$30).

4 ~~SEC. 3.~~

5 *SEC. 5.* Section 26746 of the Government Code is amended  
6 to read:

7 26746. In addition to any other fees required by law, a  
8 processing fee of ten dollars (\$10) shall be assessed for each  
9 disbursement of money collected under a writ of attachment,  
10 execution, possession, or sale, but excluding any action by the  
11 local child support agency for the establishment or enforcement of  
12 a child support obligation. The fee shall be collected from the  
13 judgment debtor in addition to, and in the same manner as, the  
14 moneys collected under the writ. All proceeds of this fee shall be  
15 deposited in a special fund in the county treasury. A separate  
16 accounting of funds deposited shall be maintained for each  
17 depositor, and funds deposited shall be for the exclusive use of the  
18 depositor.

19 The special fund shall be expended to supplement the county's  
20 cost for vehicle fleet replacement and equipment, maintenance,  
21 sheriff court services, and civil process operations.

22 A fee may not be charged if the only disbursement is the return  
23 of the judgment creditor's deposit for costs.

24 ~~SEC. 4.~~

25 *SEC. 6.* Notwithstanding Section 17610 of the Government  
26 Code, if the Commission on State Mandates determines that this  
27 act contains costs mandated by the state, reimbursement to local  
28 agencies and school districts for those costs shall be made pursuant  
29 to Part 7 (commencing with Section 17500) of Division 4 of Title  
30 2 of the Government Code. If the statewide cost of the claim for  
31 reimbursement does not exceed one million dollars (\$1,000,000),  
32 reimbursement shall be made from the State Mandates Claims  
33 Fund.

